

POC Connect

September ,2013 Edition



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RBI to co-op banks: Don't donate to directors' trusts

The Reserve Bank of India (RBI) prohibited urban cooperative banks (UCBs) to make donations to the trusts and institutions in which their directors and relatives of the banks hold position or are interested in these trusts and institutions as some of the UCBs have made contributions which are in the nature of donations to the trusts for charitable or benevolent objective or for any exhibition in which the directors or relatives are interested”

Easier exit window for foreign investors in infrastructure projects

The government is planning to give easier exit window to foreign investors in construction, housing and township projects, hoping to spur greater equity inflow into the debt burdened sector and help faster completion of delayed projects.

To beat rupee heat, Indian steel makers might export more

To tackle the impact of the depreciating rupee on their margins, top domestic primary steel producers plan to focus on increasing exports and lowering the inventory build-up period of coking coal. With the rupee having depreciated about 25 per cent since the beginning of the year, hitting an intra-day record low of 68.75 against the dollar on Wednesday, the import bill for coking coal is expected to surge, raising the expenses of steel companies

Bharti Airtel to sell DCMS business to subsidiary for Rs 177 cr

To enhance focus and develop capacity and capability across geographies in order to build scale, ability to meet customer demand and develop products to meet customer requirements, Bharti Airtel is planning to sell its Data Center and Managed Services (DCMS) business to its wholly-owned subsidiary Nextra Data Ltd for about Rs 177 crore.

Government to hike DA by 10%; to benefit 80 lakh employees & pensioners

Ahead of festival season, Central Government will this month announce a hike in dearness allowance to 90 per cent from existing 80 per cent, benefiting about 50 lakh central employees and 30 lakh pensioners.

Corporates set to plant the seed of sustainable reporting

Business houses globally have adopted the sustainability reporting principles of the Global Reporting Initiative Guidelines (GRI), United Nation's Global Compact, United Nation's Principles of Responsible Investment, ISO 26000, Carbon and Water Disclosure Projects, due to heightened awareness among all stakeholders on the need to integrate sustainability strategies into the core business

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Government may impose basic customs duty on electronic hardware items

The government committee is exploring the possibility of imposing a basic customs duty on a few electronic hardware items, which are not part of the obligatory zero customs duty list under World Trade Organization's information technology pact signed in 1996

Auto, Pharmacy firms set to get major tax relief

Automobile and pharmaceutical companies are set to get a major relief in their tax liability as the revenue department has decided to make it binding on tax officials to honor the potential costs of warranty and litigation as deductible expenses while calculating their total income.

Finance Ministry sends letters to indirect tax defaulters

The Finance Ministry sent letters to service tax, customs and excise duty defaulters asking them to come clean on certain dubious transactions carried out by them.

- The letters are being issued by two lead intelligence agencies under the Finance Ministry--Directorate General of Central Excise Intelligence (DGCEI) and Directorate General of Revenue Intelligence (DGRI)

DIPP writes to Finance Ministry for NIMZ capital gains relief

The department of industrial policy and promotion (DIPP) has asked the finance ministry to give a relief to the national investment and manufacturing zones (NIMZs) from capital gains tax and to ensure manufacturing zones enjoy tax benefits in the Direct Tax Code (DTC) Bill.

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RESERVE BANK OF INDIA

RBI/2013-14/181 A. P. (DIR Series) Circular No.24, Dated: August 14, 2013

Liberalized Remittance Scheme for Resident Individuals- Reduction of limit from USD 200,000 to USD 75,000

- The existing limit of USD 200,000 per financial year has been reduced to USD 75,000 per financial year (April - March), for
 - Any permitted current or capital account transaction or a combination of both.
 - For Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS) outside India for bona fide business activities
 - The limit for gift and loan in Rupees by Resident Individuals to NRI close relatives

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CORPORATE CASE LAWS

MAHAK VYAPAAR PVT LTD v. REGISTRAR OF COMPANIES (CAL)

C.A. No. 250 of 2013, Dated: 19.06.2013

**Applicable Section: Sections 391 and 394 of the Companies Act, 1956
(Amalgamation)**

**Whether the Court has power to direct investigation of money trail by RBI and DRI,
Held - No.**

BREIF FACTS:-

The appellant filed an application for proposing a scheme of amalgamation with another Company. Appellant submitted that directions with respect to holding of shareholder meetings was given by the court in this regard. Initially, the court directed the Registrar of Companies to conduct an investigation and accordingly the report was filed revealing that the company had issued share premium to large number of private companies and used these funds for advances to others, involving crores of investments. Further, Court also directed the Director, Revenue Intelligence to conduct an enquiry as to whether there was any money trail. The court on next date of hearing expressed displeasure on non-carrying of the order of the court by Director, Revenue Intelligence and therefore directed the Ministry of Corporate Affairs to do the needful. MCA through conducted the investigation and pointed out irregularity in the Company's affairs in its report.

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The court passed further orders directing Regional Director to indicate the steps to be taken in terms of the report and also asked Reserve Bank to submit a preliminary report. RBI observed in its preliminary report that Company was doing NBFC business without registration. The Company preferred four appeals against these orders as stated hereinabove.

DECISION:

All Appeals were disposed.

REASON:

Section 391 imposed wide discretion upon the Court. On basis of the Observation in the reports specially that of SFIO, the Court was right to remove any doubts whether such scheme was being propounded for an oblique purpose. However, Court was perhaps not correct in directing Director, Revenue Intelligence or the Reserve Bank of India. But Court was right in sending the issue to the Ministry of Corporate Affairs, as the same is the appropriate authority of the Central Government, who ultimately decide which authority would investigate the matter. Therefore, the court declined to permit the appellant to proceed with the proposed scheme of amalgamation and hence Applications for convening of meetings were dismissed.

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CIT v. Senior Manager, SBI (2012) 206 Taxman 607 (All.)

In respect of a co-owned property, would the threshold limit mentioned in section 194-I for non-deduction of tax at source apply for each co-owner separately or is it to be considered for the complete amount of rent paid to attract liability to deduct tax at source?

BRIEF FACTS: The said premise was co-owned and the share of each co-owner was definite and ascertainable. Also, the assessee made payment to each co-owner separately by way of cheque. The assessee did not deduct tax at source under section 194-I stipulating that the payment made to each co-owner was less than the minimum threshold mentioned in the said section and therefore, no liability to deduct tax at source on the rent so paid is attracted, though the whole rent taken together exceeds the said threshold limit. The Revenue contended that since the premises let out to the assessee had not been divided/partitioned by metes and bounds, it cannot be said that any specified portion let out to the assessee was owned by a particular person.

Therefore, the assessee had to deduct tax at source on the rent so paid assessing the co-owners as association of persons and the threshold limit mentioned in section 194-I was to be seen in respect of the entire rent amount. Considering the above mentioned facts, the Allahabad High Court held that, since the share of each co-owner is definite and ascertainable. The income from such property is to be assessed in the individual hands of the co-owners. Therefore, it is not necessary that there should be a physical division of the property by metes and bounds to attract the provisions of section 26.

HELD THAT:

Therefore, in the present case, since the payment of rent is made to each co-owner by way of separate cheque and their share is definite, the threshold limit mentioned in section 194-I has to be seen separately for each co-owner. Hence, the assessee would not be liable to deduct tax on the same.

CCE (A) v. KVR Construction 2012 (26) STR 195 (Kar.)

Will service tax paid mistakenly arouse service tax liability?

BRIEF FACTS:

KVR Construction was a construction company rendering services under category of "construction of residential complex service" and were paying the service tax in accordance with Finance Act, 1994. They undertook certain construction work on behalf of a trust and paid service tax accordingly. However, later they filed refund claim for the service tax so paid contending that they were not actually liable to pay service tax as it was exempt. The appellant, on the other hand, rejected the refund claim on the ground that the refund application filed by the respondent-assessee was beyond the limitation period as stated in section 11B of Central Excise Act. Department did not dispute the fact that service tax was exempted in the instant case.

POINT OF DISPUTE: Is assessee liable to claim refund on service tax paid on construction activity so done by them?

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DECISION OF THE CASE:

The Hon'ble High Court of Karnataka, distinguishing the landmark judgment by Supreme Court in the case of Mafatlal Industries v. UOI 1997 (89) E.L.T. 247 (S.C.) relating to refund of duty/tax, held that service tax paid mistakenly under construction service although actually exempt, is payment made without authority of law. Mere payment of amount would not make it 'service tax' payable by the respondents. When once there is lack of authority to collect such service tax from the respondent, it would not give authority to Department to retain such amount and validate it.

CCE & ST v. Adecco Flexione Workforce Solutions Ltd. 2012 (26) S.T.R 3 (Kar)

Whether the penalty is payable even when service tax and interest has been paid before issue of show cause notice?

BRIEF FACTS:

Adecco Flexione Workforce Solutions Ltd. had paid both the service tax and interest for delayed payment before issue of show cause notice under the Act. Section 73(3) of the Finance Act, 1994 categorically stated that if the payment of service tax and interest has been intimated to the authorities in writing, the authorities should not serve any notice for the amount so paid. But to the above, the authorities issued SCN to the appellant for delay in payment of service tax.

POINT OF DISPUTE:

Assessee contested the issue of SCN when they had already paid the service tax along with interest for delayed payment of service tax.

DECISION OF THE CASE: The Karnataka High Court held that the authorities had no authority to initiate proceedings for recovery of penalty under section 76 of the Act when the tax payer paid service tax along with interest for delayed payments promptly. As per section 73(3), no notice shall be served against persons who had paid tax with interest; the authorities can initiate proceedings against defaulters who had not paid tax and not to harass persons who had paid tax with interest on their own. If the notices were issued contrary to this section, the person who had issued notice should be punishable and not the person to whom it was issued.

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HIGHLIGHTS OF THE COMPANIES ACT'2013

(As passed by the Lok Sabha on 18.12.12 and by the Rajya Sabha on 08.08.13)

The Hon'ble President of India gave his assent to the bill on 29.08.2013

New Chapters & definitions included:

SMALL COMPANY - 2(85)

Private Company having INR 50 lacs of paid up capital (or higher limit to be prescribed not exceeding INR 5 Cr; and
Turnover not exceeding INR 2 Crores (or higher limit to be prescribed not exceeding INR 20 Cr)

ONE PERSON COMPANY - 2(62)

Introduction of One Person company akin to UK Companies Act
A private Company subscribed by one company
Name shall affix OPC or one person Company

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REGISTERED VALUERS (Chapter 17)

The valuer shall be a person having such qualification and experience and registered as a valuer in such manner and on such terms and conditions as may be prescribed. Valuation in respect of any property, stock, shares, debentures, securities, goodwill, net worth or assets of a company shall be valued by valuer.

NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL (CHAPTER 27)

This chapter deals with constitution of National Company Law Tribunal, Qualification of their members and president, term of office, selection procedure, salary and other allowances, etc

SPECIAL COURTS (Chapter 28)

This chapter deals with establishment of special courts, offences trial by special courts, appeal and revision etc.

INDEPENDENT DIRECTORS

- Prescribed Co's including Listed Co's, to have minimum 1/3rd Directors as Independent Directors
- Limited Tenure: Maximum of 2 consecutive tenures of 5 consecutive years ()
- Not entitled to any remuneration in form of stock option
- Insulated from liability unless the fraudulent act is done with their consent, knowledge & connivance

INCORPORATION OF COMPANIES

- Maximum number of members in a private company increased from 50 to 200
- Limit of number of members in an association or partnership (without incorporation) to be increased up to 100

CORPORATE SOCIAL RESPONSIBILITY (CSR)

2% of average net profits of last 3 years to be mandatorily spent on CSR by companies having

- ❖ Net worth of ₹ 5 billion or more; or
- ❖ Turnover of ₹ 10 billion or more; or
- ❖ Net profit of ₹ 50 million or more

INTER CORPORATE LOANS / INVESTMENTS

- A company cannot make investment through more than two layers of investment companies, with exceptions.
- Rate of interest on loan granted cannot be lower than the prevailing yield of 1 year, 3 year, 5 year or 10 year Government Security closest to the tenure of the loan

RELATED PARTY TRANSACTIONS

- ⦿ A related-party transaction can be entered into only if it is approved by a special resolution at the general meeting.
- ⦿ Every contract or arrangements entered into with a related party will be referred to in the board's report to shareholders, along with justification for entering into such transactions.

AUDIT AND ACCOUNTING

- Consolidation of financials for a company having a subsidiary, associate or a joint venture made mandatory
- National Financial Reporting Authority (NFRA) to be constituted by Central Government to provide for dealing with matters relating to accounting and auditing policies and standards to be followed by companies and their auditors
- Mandatory audit rotation [Individual -5 yrs, Firm-10 yrs]
- Restriction placed on provision of specified non-audit services by an auditor to ensure independence and accountability of the auditor
- Mandatory internal audit for prescribed classes of companies

MANAGEMENT AND BOARD OF DIRECTORS

- Listed and prescribed class of companies to have at least 1 Woman Director.
- At least 1 director of a company shall be a person who has stayed in India for 182 days or more in the previous calendar year. Existing companies to comply with this provision within 1 year from the date of commencement of the 2013 Act.
- Prescribed class of companies to have whole-time Key Managerial Personnel (KMP)
- Electronic voting for Board and shareholders meetings introduced
 - ❖ Corporate Social Responsibility committee
- Director to vacate office on remaining absent from all the meetings of the Board of Directors held during 12 months with or without obtaining leave of absence
- Secretarial audit mandatory for listed and prescribed classes of companies

MERGERS & ACQUISITIONS

- Restriction placed on multi-layer investment subsidiaries
- Merger of Indian company with a foreign company allowed
- Fast track merger for small companies and between holding company and its wholly owned subsidiary introduced
- Person / group of persons holding 90% or more equity shares by virtue of amalgamation etc. can purchase the remaining equity shares of the company from minority shareholders
- Any valuation of shares / assets etc. required under 2013 Act to be performed by a Registered Valuer.

Thank
You!

For any suggestions & Queries

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